IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3673 OF 2007

M/s.Intel Pharmaceuticals Pvt.Ltd. ..Petitioner.

V/s.

M.I.D.C. & Ors. ..Respondents.

Mr.P.B.Shah for petitioner.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 4, 2007.

P.C. :

1. Heard counsel for the petitioner.

2. This petition is another attempt to protract the proceeding and to remain in occupation of the property, in respect of which allotment has already been cancelled by the respondent authority. Indeed, this petition is moved under Article 226 and 227 of the Constitution. Obviously, those provisions have been invoked only to gain further time in the event of failure in this petition.

3. The question of entertaining the challenge to the communication of the Authority dated 30th May, 1994 cancelling allotment of plot in question, which is occupied by the petitioner, cannot be permitted

for more than one reason. In the first place, the challenge suffers from latches. In any case, this challenge cannot be directly entertained under article 226 or 227, especially when the petitioner moved the Civil Court for declaration by way of substantive Suit No.412 of 1998. In the circumstances, the question of entertaining prayer clause (b) of the petition does not arise at all.

4. To get over this position, counsel for the petitioner vehemently argued that the orders passed by the trial Court on the suit instituted by the petitioner challenging the order of cancellation of allotment of plot by respondent No.2 is illegal and unjust. The suit came to be dismissed by order dated 19th March, 2001 recording the the fact that the plaintiff was absent when repeatedly called out though his advocate was present. The suit came to be dismissed in exercise of powers under Order 9 Rule 3 of Civil Procedure Code on 19th March, 2001. Indeed, petitioner filed application before the trial Judge for setting aside that order. That application as filed, which was barred by delay of 11 months and 8 days. That application came up for hearing on 22nd July, 2002 when the petitioner as well as their advocate were absent. In the circumstances, even the

said application came to be dismissed by the trial Court as back as on 22nd July, 2004. That order is questioned in the present Writ Petition obviously under Article 227, which is instituted on 18th January, 2007.

5. I am in agreement with the argument of the counsel for the respondent No.1 that this petition suffers from latches. More than that, I am inclined to hold that this petition is an attempt (dishonest) to protract the proceeding and to gain time to remain in occupation of the suit plot to which the petitioner has no right, title or interest after the cancellation of allotment as back as in 1992. Hence this petition deserves to be dismissed.

6. In my opinion, such petition should be dismissed with exemplary costs to dissuade the unscrupulous litigants from resorting to such frivolous action, which results in waste of Court's time and abuse of judicial process. Hence this petition is dismissed with exemplary costs in the sum of Rs.10,000/- to be paid by the petitioner within one week from today to the High Court Legal Services Committee.